

STATE OF MICHIGAN  
COURT OF APPEALS

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AURELIA NETTLES, Individually  
and as Personal Representative of the  
Estate of ANTHONY NETTLES,  
deceased,

UNPUBLISHED  
June 1, 1999

Plaintiff-Appellant,

v

VALLINES ROOFING COMPANY and  
CEDRIC WILLIAMS,

No. 199009  
Wayne Circuit Court  
LC No. 95-518154 NI

Defendants-Appellees.

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Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We reverse and remand.

This claim arises as a consequence of a traffic accident involving plaintiff's decedent and defendant Cedric Williams at the intersection of Schaefer and West Chicago in the city of Detroit. Plaintiff alleges that decedent was driving in a northerly direction on Schaefer when Williams, who was driving in an easterly direction on West Chicago, ran a red light and caused the collision between the two vehicles. Plaintiff further alleges that Williams was driving a pickup truck owned by his employer, defendant Vallines Roofing Company. Defendants counter that Williams was driving northbound on Schaefer when decedent, who was driving eastbound on West Chicago, ran a red light and caused the collision between the two vehicles.

Plaintiff argues on appeal that the trial court improperly made factual findings and assessed the credibility of witnesses in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We agree.

This Court reviews de novo a decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition

pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Id.* Therefore, a court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* The court is not permitted to assess credibility or to determine facts on a motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

The determination of the location of the vehicles before the collision and the determination of which driver ran the red light are questions of fact. The evidence submitted by both parties on this issue is obviously conflicting. In particular, the deposition testimony of an eyewitness is directly contrary to the testimony of Williams in regard to the location of the vehicles before the collision. The testimony of these witnesses is also contrary regarding which driver ran the red light.

Although the trial court, relying on photographic evidence of the damage to decedent's vehicle, ruled that the nature and location of the damage was consistent with Williams' version of the collision, this Court does not find such evidence conclusive in light of the witness' testimony. The nature and location of the damage depends upon which roads decedent and Williams were traveling when the collision occurred. The nature and location of the damage also depends upon the speed that Williams' vehicle was traveling when he struck decedent's vehicle, (whether Williams was traveling five miles an hour, as he testified, or thirty-five to forty miles an hour as the eyewitness testified). Because the evidence before the trial court was conflicting, the grant of summary disposition in favor of defendants was improper. *DeFlaviis v Lord & Taylor*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

In reviewing the record evidence and all reasonable inferences in favor of plaintiff, we conclude that there are genuine issues of material fact that must be decided by a jury and summary dismissal was improper.

Reversed and remanded for further proceedings. Jurisdiction is not retained.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ Helene N. White